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AUTHOR Baird, James
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ABSTRACT

In preparing to discuss the roles of administrators, board members, and the negotiator in school collective bargaining, the author lists his "tried and true" principles and outlines the differences between bargaining in the public and private sectors. An important difference between the two kinds of bargaining is that school board members, unlike corporate boards, are the weakest part of the bargaining team because they lack experience in bargaining. Because of this inexperience, administrators and negotiators must spend a lot of time educating them. Other major differences between private and public bargaining include the presence of third-parties (reporters and the public, for instance), supervisors with ambivalent loyalties, and no-strike provisions. Preparation is a key element in successful bargaining. Preparation includes choosing the bargaining team, meeting with and involving supervisors, reviewing the old contract, preparing a strike contingency plan, creating appropriate ground rules, and drawing up management's demands. Once bargaining is underway, the management team should receive and review the teachers' demands, present its own demands, rank both sets for how seriously each side values them, and bargain on the "easy" provisions first. It is important that the bargaining team act professionally and that the negotiator keep his or her word. (Author/IRT)

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PREPARING FOR COLLECTIVE BARGAINING
THE PLAYERS AND THE GAME PLAY
(AN INTRODUCTORY APPROACH)

NATIONAL SCHOOL BOARDS ASSOCIATION
ANNUAL CONFERENCE
Dallas, Texas

April 14, 1981

The key players in any school board collective bargaining situation involve the board members, the key administrative personnel, the board's chief negotiator (if an outsider), the union's professional business representative, and the members of the union's negotiating team. The roles which these individuals play in the process will vary from situation to situation, depending upon the specific circumstances involved as well as the past practice of the parties.

It is very difficult to generalize concerning the proper roles of the various players in teacher negotiations, but perhaps a review of the various "tried and true" principles involved in contract negotiations will provide a guide as to the roles to be played by the perspective players.

© James Baird, 1981/The principle portion of these remarks was initially prepared for delivery to the American Association of School Administrators, 1981 Annual Conference, Atlanta, Georgia, February 13, 1981.

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While I hesitate to list all of the "tried and true" principles involved in contract negotiations, certain principles do stand out. These include: (1) the universal truth that a union will demand "more" in terms of wages, benefits and general managerial rights and that management -- to a greater or lesser extent -- will resist these demands; (2) that management will be required to meet at reasonable times and at reasonable places to discuss the union's demands; (3) that the employer will have to make proposals or counter-proposals in response to the union's demands; (4) that more time will be spent during negotiations than anyone believes necessary; (5) that "side-bar" discussions will threaten to swallow up across-the-table bargaining contact; (6) that harsh words accompanied by some degree of antagonism will occur at some point in the process; (7) that midnight will come much too soon for more evenings than anyone ever thought possible; (8) that teachers will be thinking "only of kids" as they demand more in wages and benefits and as they threaten to close your school to obtain their demands; (9) that a strike will at some point be threatened; (10) that compromise will be required before agreement can be reached; and (11) finally, when all is said and done, that agreement between the parties will occur.

In order to meaningfully understand the unique roles of the various players involved in teacher negotiations, I

believe it might be helpful to briefly outline what I see as the basic differences between public and private sector collective bargaining negotiations.

The central difference between public and private negotiations is that in the public sector the final decision maker is, of course, an elected public body -- the school board.

Rather than dealing with a monolithic and inaccessible private board of directors, during public negotiations management's negotiating team is required to satisfy a group of relative novices in labor relations -board members who are not, for the most part, case-hardened but rather are susceptible to various political influences brought about by the "public" they serve.

Unlike private sector boards, elected school board officials are frequently sensitive to the press and to calls from their "constituents," who they many times believe include the very people with whom we are bargaining. Because of the frequent turnover among elected board members, management's negotiators and administrators are always having to educate and re-educate board members about labor relations and the board members' role in the collective bargaining process. Finally, because they are elected officials, board

members' views as to labor relations often differ from those of the administration or of a private board of directors. Indeed, when they first take office, many board members can even be characterized as quite supportive of the union and its bargaining goals and positions.

Unlike a private sector corporate board of directors, these individuals' views haven't been shaped by years of hard times where they have had to learn their role first by viewing the role of other board members and, second, where they have been sensitized to the adversarial relationship of collective bargaining. In short, they haven't yet gone through the "school of hard knocks." In a word, our public board members are not "case-hardened" -- rather, in my view, they -- that's you -- constitute the weak link in public sector collective bargaining negotiations.

Because they are the "weak link", inordinate amounts of time must be spent by the concerned public negotiator and administrator in working with the board on labor relations issues and matters. Board members must be educated as to their role; they must come to understand what administration is intending to accomplish, and why. If we have a common failing in the public sector, it is that we do not spend enough time with board members prior to and during the negotiating process!

A second big difference between teacher and certain private negotiations is that in teacher negotiations we are generally negotiating with professional or semi-professional union members who exhibit little deference to the union's paid leadership. Altogether too often, the said union leader is really a follower and because of that is forced, if he or she is to lead, to be so far out in front of the "troops" that the leader finds it difficult to be diplomatic to our side in a traditional labor-management sense.

Additionally, because of the relative newness of collective bargaining to our schools, we find we are faced across the table with persons inexperienced in the collective bargaining minuet; there is little understanding of typical or standard labor relations language, provisions and procedures. Because of this, negotiations are often unduly protracted while explanations about common phrases such as, "just cause," must be made. Finally, because it is teachers with whom we deal, and I suspect because of the attitudinal influence of the tenure approach upon the teaching profession, we find conflicts at the table where teachers "know better" than administration or the elected board as to how the schools should be run. Obviously, this attitude, or what I would call role-confusion, gives rise to unnecessary conflict over such otherwise non-negotiable issues as class

size, course content, school calendar and other related issues impacting directly upon educational policy in public and private schools.

A third major difference in public as opposed to private negotiations involves the public nature of our activities. Because we negotiate on behalf of the public, and because public education impacts upon virtually each and every home in the community, many of our actions are practically if not actually conducted in a fish-bowl atmosphere. The press not only is constantly involved but, unlike private negotiations, believe they have not only a right to participate in the process, to be told of the issues, arguments and proposals, but also that they are to play an active role in any contract settlement or the resolution of a bargaining impasse. In addition, the impact of third parties, whether they be parents, PTA members, students or the like, upon our negotiations, is considerably more prevalent in public than private negotiations and is a factor which must be planned for and dealt with during every step of the negotiations process.

An additional difference in public negotiations is that our supervisors are not nearly as well identified as in the private sector and are clearly not as loyal to the management position. There are many reasons for this: our

initial lack of training for supervisors; our inability to summarily discharge "disloyal" supervisors; and the fact that the supervisor in public education, unlike his or her counterpart in the private sector, does not view the acceptance of a supervisory position as a change from a "blue shirt" to a "white shirt" position -- a change from the labor camp to the management camp -- but rather, more often views the supervisory position as a minor adjunct to his or her regular teaching activities.

Finally, one more major difference between public and private negotiations which should here be mentioned is the existence of a "no-strike" provision either expressly stated in a state's collective bargaining law or implied by local court decision. Clearly, the existence of no-strike requirements during the bargaining process frustrates teachers and/or their bargaining representatives. Additionally, it grants to them an issue of principle and an opportunity to prove how "macho" or tough they can be in support of their contract demands. I find there frequently exists a collective desire to violate the law among teachers just to prove they can do it!

A more practical problem with the no-strike laws is that without the possibility of a strike -- and the economic loss which should necessarily be suffered by both parties

during a strike -- neither side ever really has its "feet put to the fire" to test how strongly it believes in its contract positions. In private sector negotiations, the comment, "talk is cheap" frequently applies; it means little in private negotiations when one side or the other says that, "we will never agree to this" or, "this is an absolute strike issue." These phrases are pure rhetoric and no more! The only time the parties can really test one another is in the last few days, minutes or hours prior to a strike deadline when it becomes necessary to separate the wheat from the chaff in the negotiations process. Unfortunately, we have not developed sufficient mechanisms in teacher negotiations to allow this to occur on a regular, institutionalized basis.

Having discussed basic differences between the public and private sector, let me share with you certain aspects of my approach to public education negotiations. Hopefully, some of the things I say may provide you with an idea or two you might share with your administrator and/or your professional negotiator as you begin preparing for your next round of collective bargaining discussions. It may also help you decide which players, in which roles, will be helpful as your district next meets a union across the bargaining table.

Obviously, for any contract negotiations to be conducted successfully, a significant amount of time must be

spent by someone in preparing for those negotiations. From the professional negotiator's standpoint, the steps I would normally follow (some of which would be delegated) include these:

1. Meet with the administrative team.

2. Carefully review the existing contract and get a handle on the union's political situation and what is likely to be the make-up of its negotiating team.

3. Begin to prepare notebooks on contract clause language and language alternatives as well as economic data for the negotiations.

4. Finally, begin to answer -- first through the administrative team and later through the board -- the basic question, "what does the district want out of these negotiations." You should expect that answers would include such responses as, "an agreement without further loss of management rights"; or, "an agreement without a strike in the general economic area of ___%"; or, "an agreement where certain specific rights, privileges or practices, such as ____, ____ and _____, are especially reserved to management"; or, "an

agreement where certain specific rights, such as ___, ___ and ____, are received back from the union."

Obviously, much preparation time will involve direct work with the board of education. This time normally includes, among other things, direct discussions with the board to determine "where they are at" in the labor-management arena, their role in the formulation of negotiations goals, and whether or not a member will participate directly in the negotiations process at the bargaining table. This latter inquiry should result in a decision whether none, one or more board members will participate directly at the table, or whether a board subcommittee will be formed simply to work with the management team during negotiations.

I am frequently asked my opinion whether elected school board members should participate on the management team in negotiations. The standard litany among professional negotiators generally is, "No, they should not." The reasons for this position are many and varied.

A recent decision out of New York State, Matter of Harpursville Central School District, 13 PERB § 4588 (1980), is illustrative. In this case a hearing officer found that the school district violated its bargaining obligation when

its board president and vice president, members of the district's negotiating team, failed to recommend approval or to vote in favor of an agreement containing a retirement benefit compensation provision. Finding that the elected members of the team were bound to speak and act in support of the agreement signed by their chief negotiator, the hearing officer stated that: "If their [the elected board members] feelings prevented them from discharging their obligations in good faith, they were required to remove themselves from the negotiating team."

As to the advisability of board members participating in negotiations, the hearing officer said:

> "It is precisely this difficulty in severing executive [chief school officer] and legislative [board of education] functions which has caused PERB to counsel that members of legislative bodies should avoid becoming directly involved in the negotiating process which is and was intended to be exclusively an executive function. Presumably, however, the District saw some need or benefit in having members of the Board become part of its negotiating team. They undertook a purely voluntary act carrying responsibilities which affect their subsequent actions. Having allowed the memorandum of understanding to be executed while members of the team, the above described duties [i.e. negotiating in good faith] became obligatory regardless of circumstance."

I believe as a general rule that board members should not be present at the table during negotiations. However, there will be exceptions. For example, in negotiations with

Maine Township District 207, a Chicago, Illinois suburban district, the chief spokesman is a member of the Board. Two other Board members are on the five-person management team, and my role is as a (usually) silent advisor. For this particular district, the mix is absolutely perfect and their agreements year in and year out are positively among the best in the nation. You would all do well to emulate their results! In another district, however, with different board members or a different administrative team, such an approach might well lead to disaster.

Another major step in preparing for negotiations is to identify and meet with the school district's supervisory employees. In some districts, this will include department chairpersons and deans, in others it will be the school principal and certain central office administrative personnel. Clearly, to the extent that your district does not have a strong cadre of management representatives -- called "supervisors" in labor relations terminology -- you should be taking steps to rectify this situation immediately.

To the extent that supervisors are included in bargaining units, steps should be taken to remove them. To the extent that persons holding certain management-oriented positions are not aware of their supervisory responsibilities in the labor relations context, an educational process should begin as soon as possible.

To be successful in labor relations, you must have a large number of supervisors who are exempt from union representation and collective bargaining and who are loyal to administration. Once your supervisors are identified, the board's negotiator should meet with them and obtain ideas from them for the district's bargaining demands. Specifically, the supervisors should be asked, "If you could change anything in the existing contract or the district's method of operations in order to improve the performance of the district, what would it be?" From their ideas, important bargaining proposals may easily be created.

In addition to such a meeting, it may be wise to have a subcommittee of supervisors formed which can meet with the management negotiating team on a regular basis. Not only will this improve communications, but it will grant to the supervisors a sense of belonging in the negotiating process, a sense that they are represented at the negotiation table, and a sense that their views are important. In short, it should begin to create in them a sort of "ownership" in management's positions to be advanced during the negotiations.

Additional steps which should be conducted by management include:

* Reviewing the old contract and proposing changes;

* Preparing a strike contingency plan in the event a strike should occur or be threatened;

* Creating a public environment which will be receptive to management's goals at the bargaining table (in auto negotiations, for example, the presidents of the various companies can be found months in advance delivering speeches to civic, community or professional associations outlining their goals in the negotiations and attempting to create an environment which will carry over to the negotiating table); and

* Creating appropriate ground rules for the negotiations. These ground rules should include, depending upon past practice, provisions that negotiations will be conducted on non-work time; that certain limits be set on the number of representatives the teachers may bring to the negotiating table; that non-economic issues be considered first, with economic issues discussed thereafter; that "nothing is agreed until everything is agreed"; that the extent of the authority of the teachers' negotiating team and

its ratification process be described and understood; and, if evening negotiations are to occur, a general time limit be set beyond which the negotiations will not continue absent significant movement or mutual agreement among the parties.

The final step in preparing for negotiations is the creation of management's demands. In my view, management should always bring demands of its own to the bargaining table. I'm not talking about one or two demands, but rather ten or twenty.

Management demands should be advanced for two or three purposes. First, certain changes should be sought because they will improve the performance and productivity of the district. I suspect there's not a district represented at this conference which could not make certain changes -- or eliminate certain practices -- which have grown up over time but which are counter-productive to the overall efficiency of the district's operations.

Management demands should also be advanced to create bargaining leverage. Without demands, it is very difficult to make bargaining "trades" at the table without giving up significant managerial rights. With management demands, however, such trading not only becomes possible but, if

handled properly, becomes a necessity in the "quid pro quo" process of collective bargaining.

Finally, management's demands allow management to obtain something from the union during negotiations in return for the concessions management will undoubtedly make if an agreement is to be reached. One of the problems with our public negotiators these days is, in my view, that many do not realize that, so long as negotiations are to occur, they should be used for management's benefit rather than detriment; and that there is nothing immoral or illegal with management "winning" certain items, clauses or concessions at the bargaining table.

Once the negotiating team is selected (I personally prefer a team of from three to five members, with heavy emphasis upon the role of the notetaker) and other pre-negotiations steps are completed, the negotiating process is ready to begin. It is at this point where the accepted minuet of negotiations begins to occur.

While each negotiations differs, in my experience the first item of business is always to receive the union's demands. Thereafter, I ask the union carefully to review each and every one of their demands, to explain exactly what the demand does or does not do, what it means or does not mean, and why the demand is needed. I place special

emphasis on this latter area and normally insist upon specifics. That is, "What is the problem?", "Why do we need this specific change?", and "How will this demand improve the educational goals of the school district?"

In the course of reviewing the union's demands, careful attention must be paid as to whether or not the demand is a mandatory subject of negotiations. Great care must be taken to insure that your jurisdiction does not begin negotiating over non-negotiable or non-mandatory subjects of bargaining. If the matter is non-mandatory, your negotiator must refuse to talk about it and should be in a position to explain exactly why the demand is non-mandatory, with legal citations included where appropriate.

Generally, the next step of the negotiating process is for the management team to present its demands to the union. Each of management's demands, in turn, should be explained -- with sound, strong and logical reasons for each demand advanced at the time the demand is presented. While I am a great believer in the submission of management demands, I am likewise an absolute believer that a management demand should never be advanced if it cannot be logically and honestly supported.

Once the union's demands are received, I believe they should be reviewed during private sessions with supervisory

and administrative personnel to determine their total short and long-range impact upon the operations of the district. Supervisory input is exceedingly important in this process; not only for ideas and demands which might be advanced, but also because the presence of union demands directly impacting upon supervisory authority -- which is generally the case -- may help to "radicalize" your supervisors in support of management's bargaining positions.

Another step I normally take is to "rank" union and management demands with the administrative and school board representatives prior to engaging in substantive negotiations over each item. By "ranking," I mean prioritizing each demand as each side is likely to assess or view that demand from its own perspective. The way I do this is to list the demand and next to it to place two columns, one "for union" and the other "for management." Once this is done, my negotiating team and the board (where approprate) estimates on a scale of one (1) to five (5) the importance of this demand to management and to the union.

For example, if a demand is for a "reduction-in-force" clause based almost exclusively upon seniority where no reduction in force provision now exists, such a demand is normally given a five (5) rating in importance from the union standpoint. This means this item is, in our analysis,

very, very important to the union. From management's standpoint, such a provision will likewise normally be given a five (5) or, if the views concerning the demand are strongly held, a "five circled." A circle for one side or the other is considered to indicate that the item is, from its perspective, a strike issue.

By way of comparison, a union demand for dues check-off, where check-off does not already exist, may be considered a four (4) or five (5) in importance from the union's standpoint but only a one or two from management's perspective. Needless to say, this ranking scheme allows the negotiator better to understand the priorities of its side and to evaluate the priorities of the other side. Not only does this help prepare the negotiator for later packaging of proposals, but also it helps management during the last frenzied moments preceding a possible strike to place in perspective the demands on the table which -- while they may now loom large in the minds of the players -- were earlier ranked in a more sober and reflective environment.

After the ranking process is completed, the actual substance of negotiating can begin. The demands can be approached in numerical order or in any fashion which seems appropriate. Generally, I recommend starting with the "easy" provisions; that is, those upon which agreement can

be reached with little difficulty. I do this in order to create an environment of trust and an atmosphere of agreement. I personally try to obtain tentative agreements or "TA's" on as many items as early as possible.

Obviously, at some point or other, the ridiculous demands must be removed from the table, the acceptable demands agreed upon and the difficult items confronted. Generally, anywhere from three to ten negotiating sessions will be required to progress to this stage in the negotiations.

After each of these negotiating sessions, by the way, I insist that negotiations notes from each session be typed up and circulated to all team members to be supplemented by them. Thereafter, I usually advise that copies be submitted to board members or a subcommittee representing the board so that the board may be fully informed as to what is or is not occurring at the table. In addition, weekly or monthly reports are submitted from the bargaining team to the board to keep them up to date on the progress of negotiations.

In my view it is exceedingly important that cordial, professional relationships be maintained at the negotiating table. There is no reason to manufacture discord or disagreement as that will come naturally enough during the negotiating process.

It is important to realize that, during collective bargaining negotiations, a negotiator's word is his bond. The negotiator must be honest; he must say what he means and he must not renige on his agreements. If the honesty or integrity of a negotiator is seriously questioned, his effectiveness is seriously diminished if not completely destroyed.

Once the difficult issues of today's teacher negotiations, such as calendar, class size, reduction-in-force provisions, management authority to subcontract work or transfer employees and the existence of a grievance procedure with advisory or binding arbitration have been isolated and when such other non-work paid time issues as personal days, snow days, institute days and the like have fully been discussed and explored the issues are then ready for resolution either through compromise, packaging or trading off.

The process of compromising, packaging or trading-off is very difficult to describe and generally occurs during the latter stages of the negotiating scenario. If tentative impasse is reached on important items, and further progress is not immediately forthcoming, the parties will often turn to monetary issues in hopes of arranging a monetary trade-off. Perhaps the district may offer extra money in return for the union dropping certain proposals or the union may

accept a lesser monetary package in return for certain "non-monetary" issues as strong reduction in force language or more paid non-teaching time off.

Seemingly of late, major economic issues -- in addition to straight dollars and cents items -- have involved such matters as tax sheltering schemes involving management payments to teacher retirement systems as well as special emphasis upon new fringe benefits such as dental insurance and pre-paid legal plans. Of course, the argument continues to rage at the negotiating table as to whether a step or lane change on a salary schedule constitutes "new money" which should be considered part of a wage increase or whether the lane change or step increase is something the employee already "owns" and therefore is not to be counted in calculating the amount of the overall wage offer or package. There is no magic way to resolve these issues except to say that, through hard work, long sessions, many words and much frustration, somehow these matters are almost always are resolved.

There are, in my view, three key ingredients to any successful negotiations. The first is strong adequate preparation.

The second is patience. Successful negotiations are bound to take time. If there is one single frustration I face in discussing negotiations with administrators and

elected board members, it is their inability to understand why we can't get a contract done sooner; why we can't get the job done faster; why we can't cut through things and get to the heart of the matter without wasting so much time.

I don't know why negotiations take so long, but I do know that they do. There are only two ways I know for an employer to avoid spending large amounts of time in negotiations and still be negotiating in good faith. One is to quickly and rapidly grant to the union significant concessions. If you want to cut negotiations short, simply propose a very sweet, a very fat contract settlement. The second way is to insist upon and obtain a three-year contract. While the time necessary to obtain a three-year contract will not necessarily be less than that needed to obtain a one or two-year agreement, and may even be a slight bit longer, it will allow you to amortize the time spent in negotiations over a three-year period, thus cutting down the amount of time spent per year in the negotiating process.

Many school board members and administrators ask me such things as: "When do you make concessions?", "How do you package offers or counter-offers?", "How do you draft counter-proposal language?", "When do you move for settlement?", and "When do you hold firm?" I'm sorry, but I can't provide ready answers to these questions; they are matters which depend upon the

circumstances of the moment and the overall environment as perceived by the experienced negotiator.

As I mentioned earlier, no two negotiations are exactly the same; the method and manner of presenting the employer's position and the timing of concessions cannot be stated in any fixed formula. In order to obtain some degree of success, however, I do know that a tremendous amount of time must be spent in preparing for negotiations, a strong strike contingency plan must be created, specific management goals for the negotiations must be formulated and the will of the management negotiating team -- and especially the school board -- must be firm throughout the process. If all of these things occur, and if your school board is willing to expend the time and effort necessary for success, then a multi-year collective bargaining agreement will indeed emerge from the negotiations process "sooner or later."